

**CONRAIL**



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EPA Region 5 Records Ctr.



247074

April 7, 1999

**VIA TELECOPIER AND  
UPS NEXT DAY AIR**

Ann Coyle, Esquire  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Re: Access to Conrail Property, Tilton, IL

Dear Ms. Coyle:

I am writing in response to the correspondence by you and Cindy Nolan, dated March 31, 1999, concerning access to Conrail property adjacent to the Tilton Plating Site, Tilton, IL. Conrail will provide access to the EPA or its contractor if it enters into the attached License Agreement.

Conrail must use the Agreement because it has genuine concerns for the public's safety and the safety of EPA personnel and contractors' employees who, because of their lack of familiarity with basic railroad safety precautions, may be placed in jeopardy when working in close proximity to Conrail's active rail line. To ensure the public safety as well as the safety of all individuals working on Conrail's property, Conrail's Temporary License Agreement includes provisions relating to the location of work, advance notice of access to allow modification of train operations, if necessary, the use of flagmen to protect all individuals working on the property, and clearances to ensure that tracks are not fouled.

In addition, Conrail's communication cables as well as fiber optic telecommunication cables are routinely placed along right-of-ways. Underground pipes, gas lines and other utility conveyance systems may also be present along any given right-of-way. Because invasive work could interfere with, damage, or sever underground pipes and signals, communications or fiber optic cables, it is imperative that the location of invasive work be

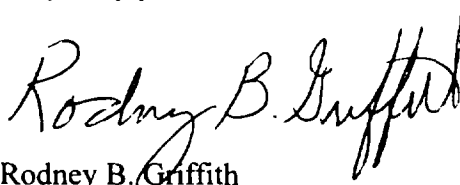
Ann Coyle, Esquire  
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discussed, coordinated and approved by Conrail's engineering department prior to the performance of the work.

Lastly, Conrail routinely requires that Railroad Protective Public Liability Insurance coverage be provided to protect Conrail from any loss, damages or personal injuries. General liability insurance does not cover instances of loss on railroad property.

Please call me at your early convenience to discuss the License Agreement or have a representative for your contractor contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Rodney B. Griffith". The signature is written in dark ink and is positioned above the printed name.

Rodney B. Griffith

RBG/tms

## **CONSOLIDATED RAIL CORPORATION**

### **TEMPORARY LICENSE AGREEMENT PERMITTING ENTRY ON PROPERTY**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 1999 by and between \_\_\_\_\_, hereinafter called "Licensee", and **CONSOLIDATED RAIL CORPORATION**, a corporation of the Commonwealth of Pennsylvania, hereinafter called "**CONRAIL**".

#### **1. PERMISSION, LOCATION AND ACCESS**

Subject to the terms and conditions hereinafter set forth **CONRAIL** hereby grants a temporary license to Licensee, and/or its agent(s), to enter upon the property of **CONRAIL** at \_\_\_\_\_, as shown on the site plan and/or maps attached hereto, for the purpose of \_\_\_\_\_

#### **2. LIABILITY**

Licensee hereby releases and will protect, defend, indemnify and save harmless **CONRAIL** and its subsidiaries, and their officers, agents and employees, against all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages and expenses of every character whatsoever (hereinafter collectively referred to as "Claims") for injury (including death) sustained by the officers, agents and employees of **CONRAIL** and its subsidiaries, Licensee and any officers, agents and employees of Licensee, and all other persons whomsoever, and for damage to or loss or destruction of property of any kind by whomsoever owned, caused by, resulting from, arising out of, or occurring in connection with the entry or presence of Licensee and its officers, agents and employees on **CONRAIL** property or incidental to or appertaining thereto. As a result of any such claims, Licensee will assume at its own expense, on behalf of **CONRAIL** and its subsidiaries, and their officers, agents and employees, the defense of any such claims which may be brought against said parties and pay on behalf of said parties the amount of any settlement agreed upon, judgment that may be entered, and any other amounts assessed in connection therewith, plus all costs and expenses involved as aforementioned.

#### **3. ENTRY UPON PROPERTY**

Licensee shall notify **CONRAIL's Area Engineer**, who will be, telephone number \_\_\_\_\_ ( ) at least 10 working days in advance before entering upon or starting any work upon **CONRAIL** property. No entry upon **CONRAIL** property will be permitted until this Agreement is signed, any charges due hereunder are paid and permission has been received from **CONRAIL's Engineer**.

#### **4. CONRAIL OPERATIONS**

All operations of Licensee shall be carried on in such a manner so as not to interfere with **CONRAIL** facilities. If in the opinion of the said Area Engineer or his designee, conditions warrant at any time, **CONRAIL** will provide engineering inspection, facility location and identification and/or flag service and protection, all at the expense of Licensee and Licensee will pay to **CONRAIL** the full cost and expense thereof. In addition, if it is necessary to perform track or facility alterations to allow the Licensee to perform his work, any track or facility alterations will be performed by **CONRAIL** at the expense of the Licensee. **CONRAIL** reserves the right to repair or maintain, at Licensee expense, any tracks or facilities damaged or altered by the Licensee during the course of time Licensee entered **CONRAIL** property.

#### **5. CROSSING OR FOULING TRACK**

In no event shall equipment or material be transported across **CONRAIL's** track or tracks without special permission and with advance notice of at least forty-eight (48) hours so that **CONRAIL** may arrange for the necessary flag protection at the expense of Licensee and Licensee will pay to **CONRAIL** the full cost and expense therefor. Such permission shall be obtained from the **CONRAIL** Engineer.

Licensee agrees not to enter upon or foul track until given signal to do so by a flagman.

#### **6. CLEARANCES**

All equipment working on or material in use upon the property of **CONRAIL** shall be kept at all times no less than fifteen (15) feet from the nearest rail of any track, or as subsequently modified in writing by the **CONRAIL** Engineer. Licensee shall conduct its operations so that no part of its equipment shall foul an operating track, transmission, signal or communication line, or any other structure of **CONRAIL**.

#### **7. RESTORATION OF PREMISES**

Upon completion of the work, **CONRAIL's** property shall be left in a condition satisfactory to the Engineer. This includes, without limitation, immediate restoration of any fences removed and proper decommissioning of any monitoring well(s)/borings. In the event monitoring well(s) need to be installed, **CONRAIL** will require certification that the well(s) has been abandoned to applicable state requirements.

## **8. TERM OF LICENSE**

CONRAIL reserves the right to revoke this Agreement at any time. Licensee shall notify the Engineer when use of the property or work is completed, and this Agreement shall expire upon the giving of such notice, or on , if not sooner terminated. Under no circumstances shall this Agreement be construed as granting Licensee any right, title or interest of any kind or character in or about the land or premises of CONRAIL.

## **9. INSURANCE**

In addition to any other forms of insurance or bonds required under this Agreement and except and to the extent that any of the requirements of this section are expressly waived or revised in writing by CONRAIL, Licensee, prior to the commencement of any work pursuant to this Agreement and throughout the term of this Agreement, shall, at its own cost and expense, maintain insurance of the following kinds and amounts and deliver to CONRAIL's Manager-Insurance, satisfactory evidence of such insurance and for identification purposes, indicate on the certificate(s) the project name.

### **WORKERS' COMPENSATION / EMPLOYERS' LIABILITY INSURANCE**

- (a) Workers' Compensation insurance in Statutory Amounts. Employers' Liability and Occupational Disease Insurance with limits of \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 each employee. Such policy shall include a waiver of subrogation in favor of CONRAIL.

### **AUTOMOBILE LIABILITY INSURANCE**

- (b) Automobile Liability insurance with a limit of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence. CONRAIL must be named as an additional insured under this insurance.

### **PUBLIC LIABILITY INSURANCE**

- (c) General Liability insurance, including contractual liability insurance, with a limit of not less than \$5,000,000 combined single limit for bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. CONRAIL must be named as an additional insured under this insurance.

## RAILROAD PROTECTIVE LIABILITY INSURANCE

- (d) Licensee shall provide with respect to the operations performed by it or any of its' subcontractors, Railroad Protective Liability Insurance (ISO-RIMA Form) in the name \* of Consolidated Rail Corporation, with a limit of not less than \$2,000,000 per occurrence, combined single limit, for bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons and for damage to or destruction of property, including the loss of use thereof. Such insurance shall also contain an aggregate of not less than \$6,000,000 for damages arising out of more than one occurrence. **\*CONRAIL shall be the "Named Insured" on this policy.**

## ENVIRONMENTAL CONSULTANTS PROFESSIONAL LIABILITY/CONTRACTORS POLLUTION LEGAL LIABILITY

- (e) (1) Professional Liability insurance with limits of not less than \$5,000,000 per occurrence/\$5,000,000 aggregate covering bodily injury, property damage and cleanup expenses resulting from pollution conditions arising out of an act, error or omission in the rendering or failure to render professional services under the Agreement.
- (e) (2) In addition, General Contractor's Pollution Liability coverage, with limits of not less than \$5,000,000 per occurrence/\$5,000,000 aggregate covering bodily injury, property damage and cleanup expenses resulting from pollution conditions. Also provides coverage for contractor's liability for subcontracted activities, such as lead paint removal and asbestos abatement. **CONRAIL must be named as an additional insured under this insurance.**

Licensee, at its' option, shall pay to **CONRAIL**, the sum of Four Hundred Fifty (\$450.00), which is comprised of \$225.00 for Railroad Protective Liability Insurance coverage required in Section (d) and \$225.00 as compensation for the preparation of this permit. The Railroad Protective Liability Insurance shall provide insurance coverage exclusively for **CONRAIL's** legal liability for acts or omissions of Licensee and/or its' contractors and/or subcontractor(s) in connection with this Agreement. If Licensee does not pay **CONRAIL** the sum noted, Licensee shall be obligated to provide evidence of Railroad Protective Liability insurance as required in Section (d).

Licensee shall maintain the insurances required in Sections (a), (b), (c), (e) (1), and (e) (2) to protect its' interests in connection with its' activities under this Agreement. Licensee shall also ensure that all subcontractors employed in connection with this Agreement shall comply with

all insurance requirements in Sections (a), (b), (c), (e)(1) and (e)(2).

- The insurance hereinbefore specified shall be carried until the Project is satisfactorily completed and formally accepted. Failure to procure and maintain such insurance in force shall constitute a Breach of Contract hereunder.
- The aforementioned insurances shall be effected under standard form policies issued by insurers of financial responsibility which are rated "A" or better by Best's Insurance Reports, "AA" or better by Standard & Poor's Insurance Rating Service and "Aa" or better by Moody's Investors Service. CONRAIL reserves the right to reject as inadequate, coverage provided by an insurance company rated less than the ratings noted above by any of the aforementioned rating services.
- The aforesaid insurance protection shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement or any attachment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the periods of time for which such insurance was obtained.
- Licensee shall furnish CONRAIL with certificates of insurance evidencing the insurances required in subsections (a), (b), (c), (e)(1), and (e)(2) and shall also furnish the original Railroad Protective Liability insurance policy referred to in subsection (d), at least thirty (30) days prior to the commencement of this Agreement. CONRAIL must be named as an additional insured under the insurances outlined in subsections (b), (c), and (e)(2). Certificates of insurance and/or policies should be sent to Consolidated Rail Corporation, Manager-Insurance, 2001 Market St., 6A, P.O. Box 41406, Philadelphia, PA 19101-1406. For identification purposes, please reference this specific case on the certificates of insurance.
- All insurance must be endorsed to provide that the insurance company shall give thirty (30) days prior written notice to Consolidated Rail Corporation, Manager-Insurance, 2001 Market Street, 6B, P.O. Box 41406, Philadelphia, PA 19101-1406, if the policies are to be terminated or if any changes are to be made which will in any way affect the insurance requirements of this Agreement.

#### 10. TITLE TO ENVIRONMENTAL STUDIES

The results of all tests conducted by Licensee pursuant to the terms of this Agreement, including any and all reports and

analysis obtained or compiled by the Licensee, shall be promptly furnished to **CONRAIL**. The results and reports from any environmental investigations respecting **CONRAIL's** property shall remain confidential except for such disclosure as may be required by applicable federal or state law and as determined by **CONRAIL**.

**11. SURVIVE TERMINATION**

The obligations accruing under this Agreement shall survive its termination.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first above written.

**WITNESS:**

\_\_\_\_\_

**BY:** \_\_\_\_\_

**WITNESS:**

**CONSOLIDATED RAIL CORPORATION**

\_\_\_\_\_

**BY:** \_\_\_\_\_